

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: January 22, 2009

Signature:

(William A. Di Bianca)

Docket No.: SPINE 3.0-437 CIPCIPCIPCIPCIPCON II  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Errico et al.

Application No.: 10/784,637

Confirmation No.: 8185

Filed: February 23, 2004

Art Unit: 3738

For: INSTRUMENTATION FOR PROPERLY  
SEATING AN ARTIFICIAL DISC IN AN  
INTERVERTEBRAL SPACE

Examiner: B. E.  
Pellegrino

**PETITION UNDER 37 C.F.R. § 1.78(A) (3)**  
**TO CORRECT PRIORITY INFORMATION**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

01/27/2009 MBELETE1 00000053 10784637  
03 FC:1464 130.00 DA

Dear Madam:

**I. SUMMARY**

This petition is submitted to correct the priority information in U.S. Patent Application 10/784,637 ("the '637 application"). In particular, the relationship information, in the original filing on February 23, 2004, for the applications from which benefit is claimed is believed to be incorrect as it did not specify the relationship to the prior applications and thus correction is sought. The petition fee set forth in 37 C.F.R. § 1.17(t) of \$1,400.00 is provided herewith.

Petitioner submits that the Domestic Priority Data as stated in the Filing Receipt (mailed May 19, 2004) is incorrect. Petitioner requests that the Domestic Priority Data be revised

~~01/27/2009 MBELETE1 00000053 121095 10784637~~  
~~03 FC:1464 130.00 DA~~

Application No.: 10/784,637

Docket No.: SPINE 3.0-437 CIPCIPCIPCIPCIPCON II

as shown in the attached "Initial" Application Data Sheet which includes a signature from the prosecuting attorney, in the Request for Corrected Filing Receipt and in the revisions to the specification in an Amendment filed on October 31, 2007, and any delay by Petitioner in submitting the correct priority data to the U.S. Patent & Trademark Office ("USPTO"), from the time the claim was due to the date the claim was filed, was unintentional.

## **II. FACTS**

A statement of domestic priority data, on the first page of the specification of the '637 application, filed February 23, 2004, included a claim for priority under 35 U.S.C. §120 as a "The present application is a continuation application of U.S. Patent Application Serial Number 10/282,356 (filed October 29, 2002) entitled "Instrumentation and Methods for use in Implanting an Artificial Intervertebral Disc", which is a continuing application of U.S. Patent Application Serial Number 10/256,160 (filed September 26, 2002) entitled "Artificial Intervertebral Disc Having Limited Rotation Using a Captured Ball and Socket Joint With a Solid Ball and Compression Locking Post", which is a continuing application of U.S. Patent Application Serial Number 10/175,417 (filed June 19, 2002) entitled "Artificial Intervertebral Disc Utilizing a Ball Joint Coupling", which is a continuing application of U.S. Patent Application Serial Number 10/151,280 (filed May 20, 2002) entitled "Tension Bearing Artificial Disc Providing a Centroid of Motion Centrally Located Within an Intervertebral Space", which is a continuing application of both U.S. Patent Application Serial Number 09/970,479 (filed October 4, 2001) entitled "Intervertebral Spacer Device Utilizing a Spirally Slotted Belleville Washer Having Radially Extending Grooves" as well as U.S. Patent Application Serial Number 10/140,153 (filed

Application No.: 10/784,637

Docket No.: SPINE 3.0-437 CIPCIPCIPCIPCIPCON II

May 7, 2002) entitled "Artificial Intervertebral Disc Having a Flexible Wire Mesh Vertebral Body Contact Element", the former being a continuing application of U.S. Patent Application Serial Number 09/968,046 (filed October 1, 2001) entitled "Intervertebral Spacer Device Utilizing a Belleville Washer Having Radially Extending Grooves" and the latter being a continuing application of both U.S. Patent Application Serial Number 09/970,479 (detailed above) as well as U.S. Patent Application Serial Number 10/128,619 (filed April 23, 2002) entitled "Intervertebral Spacer Having a Flexible Wire Mesh Vertebral Body Contact Element", which is a continuing application of both U.S. Patent Application Serial Number 09/906,119 (filed July 16, 2001) and entitled "Trial Intervertebral Distraction Spacers" as well as U.S. Patent Application Serial Number 09/982,148 (filed October 18, 2001) and entitled "Intervertebral Spacer Device Having Arch Shaped Spring Elements". All of the above mentioned applications are hereby incorporated by reference herein in their respective entireties.". No Application Data Sheet was filed with the application.

Subsequent to the filing of the '637 application, the '637 application, along with all the related files, were transferred as just one part of a sizeable patent portfolio, to the law firm of Lerner, David, Littenberg, Krumholz and Mentlik, LLP ("Lerner, David"). A revocation and substitution of attorneys was executed by the assignee and mailed on January 31, 2005.

After the transfer of files, the prosecuting attorney recognized that the domestic priority information was incorrect and inadvertently filed an Amendment to the Cross-Reference paragraph of the specification on October 31, 2007 without this petition and related fee.

Application No.: 10/784,637

Docket No.: SPINE 3.0-437 CIPCIPCIPCIPCIPCON II

### III. NATURE OF PETITION

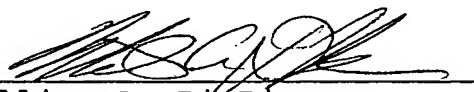
Petitioner respectfully submits this petition in connection with the correction of domestic priority, asserting that the delay by Petitioner in submitting the correct priority data to the USPTO, from the time the claim was due and the date the claim was filed, was unintentional.

For the good cause shown, it is respectfully requested that the instant Petition be granted and the priority corrected as shown in the amendments to the Cross-Reference to Related Applications paragraph of the specification included in an Amendment filed on October 31, 2007, and in the "Initial" Application Data Sheet and Request for Corrected Filing Receipt filed today.

The Director is hereby authorized to charge our Deposit Account No. 12-1095 to cover the fee set forth in 37 C.F.R. § 1.17(t). If there are any additional charges in connection with this requested Petition, please charge Deposit Account No. 12-1095 therefor.

Dated: January 22, 2009

Respectfully submitted,

By   
William A. Di Bianca  
Registration No.: 58,653  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicants